ORIGINAL

92-5618

Supreme Court, U.S.
FILED
AUG 3 1992
OFFICE OF THE CLERK

**SUPREME COURT OF THE UNITED STATES**

James L. Martin, petitioner : No. _____

:

v. :

Christine McDermott and Delaware Volunteer Legal Services, Inc., a.k.a Widener University School of Law Delaware Civil Clinic, respondents

**Petitioner's Motion for Leave to Proceed *in forma pauperis***

I, James L. Martin, move for leave to proceed in this matter *in forma pauperis*, without prepayment of costs and fees. All fees and costs incident to this matter in the courts below have been prepaid. My Verified Statement in support of this Motion is attached as Ex-1a, and the issue presented is incorporated herein from the Petition for a Writ of Certiorari to the Supreme Court of Delaware, which accompanies this Motion.

DATED: August 3, 1992 BY: James L. Martin

James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

**SUPREME COURT OF THE UNITED STATES**

James L. Martin, petitioner : No. _____
:
v. :

Christine McDermott and Delaware Volunteer Legal Services, Inc., a.k.a
Widener University School of Law Delaware Civil Clinic, respondents

**Petition for a Writ of Certiorari**
**to the Supreme Court of Delaware**

**DATED: August 3, 1992**

BY: James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957



**QUESTION PRESENTED**

Should recusal and disqualification of a state court judge be granted for a conflict of interest with a Law School that receives federal funds and diverts a significant part of those funds to discriminate against an alumnus by recasting the account of his life to divest him of his license to practice law and to violate the ADA and the Rehabilitation Act, among other federal laws?

## STATEMENT OF THIS COURT'S JURISDICTION

Date of entry of judgment sought to be reviewed: 5-26-92. 1a - 3a.

Date of order respecting a rehearing: 6-5-92. 4a.

Statute to confer jurisdiction for review: 28 USC Sec. 1257(a).

TABLE OF CONTENTS AND AUTHORITIES IS OMITTED (Less than 6 pages)

## OPINIONS AND ORDERS IN THE COURTS BELOW

On 9-17-91, DE State Trial Judge Poppiti granted the respondents' Amended Motion to Dismiss on the basis that one of the defendants in the matter before the Justice of the Peace Court, Margaret Newcomb, was not the same as the respondents in the complaint here, so that the parties were not identical. He therefore claimed that the Superior Court had no subject matter jurisdiction. See Ex-9a.

I also sought the recusal and disqualification of Judge Poppiti for a conflict of interest with the respondent Widener University School of Law's Volunteer Legal Services, Inc. Judge Poppiti denied the motion on 11-7-91. (See Ex-8a.) The basis for the denied was "for the same reasons as stated in Martin v. Widener University School of Law, et. al., . . .." This Court may judicially notice the removal of Judge Poppiti from that case. It was taken from Judge Poppiti and re-assigned to Judge Herlihy. See A(15) attached to my Opening Brief in the DE Supreme Court. I moved for reargument of the decision on the Motion to Dismiss; it was denied by order dated 11-4-91, from which I appealed to the DE Supreme Court. The 11-4-91 Order is at Ex-10a.

DE Justices Moore, Walsh, and Holland were properly recused and disqualified from any involvement in the appeal on account of their association with respondent Widener. 5a to 6a. In an Order dated 2-27-92, the Court below designated two judges to temporarily comprise an *ad hoc* quorum. I later determined that at least one specially-designated judge, Chancellor William T. Allen, also had a conflict of interest with Widener and should have been disqualified as well.



## AUTHORITY RELIED UPON

Supreme Court Rule 10.1(b) and (c) [governing consideration of a certiorari petition]: "When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;"

"When a state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court."

## STATEMENT OF THE CASE

Stage of Proceedings where questions presented were raised: As soon as Judge Poppiti was assigned to this case, I filed a Motion to Recuse and to Disqualify, with a supporting Memorandum of Law, on 9-17-91, and raised the federal questions about whether a state court judge, publically and admittedly associated with a recipient of federal funds, and also a party to this case, should be allowed to continue the School's violation of the federal laws against discrimination based upon accusations about remote medical condition. I continued to advance these claims at every stage in the proceedings.

The relevant facts, as set forth in my Motion to Recuse and to Disqualify Hon. Vincent J. Poppiti, are as follows:

"1. Judge Poppiti appears at the Widener University School of Law, which operates the defendant Clinic, at least once every year for commencement, where he, with other members of the local bench, are honored participants with Anthony Santoro, the School's Dean, who is a defendant in the related case at No. 91C-03-255.

"2. Judge Poppiti receives gifts from the School, although he did not say whether these gifts include any honoraria.

"3. After the commencement exercises, Judge Poppiti associates with the School's administrators and faculty.

"4. As indicated in the *1985 Alumni Directory of the Delaware Law School*, "As the only law school in Delaware, the Delaware Law School [now called the "Widener University School of Law] maintains particularly close ties to the Delaware bar and judiciary."

"5. The Delaware Law School and those parties associated with it are treated as sacred cows, and this applies in both the state and federal courts in DE. * * * * * * *

"6. . . . . Many of the judges on the Third Circuit have also been recused for various conflicts of interest, so that a quorum there as to any matter I am involved in is quite questionable.

"7. The affiliation between the School and the state judiciary is just as clear. DE Chief Justice Andrew G.T. Moore is on the DLS Adjunct Faculty and has already done what he can to protect the School. Hon. Andrew D. Christie, Chief Justice of the DE Supreme Court, is regularly honored by the Delaware Law School. * * * * * * * Hon. Joseph T. Walsh, Justice of the DE Supreme Court, participates in honorary and other functions at, by, and for the DE Law School. Hon. Randy J. Holland, Justice of the DE Supreme Court, also participates in honorary and other functions at, by, and for the DE Law School.

"8. During a meeting between Frank Downs and me on 7-2-90, Downs claimed he was a friend of Judge Poppiti, who is alleged to have told Downs that I was not suited or eligible to practice law. (At the Motion hearing on 7-9-91 in the related case, Judge Poppiti said he does not even know Frank Downs.)



"9. Here are excerpts from a tape-recorded phone conversation between Downs and me on 10-22-90:

Downs: "I took your filing on Joyce's case to two attorneys and a DE state judge [Judge Vincent Poppiti] for evaluation, and they said it was argumentative and amateurish. . . . Going over it again, it is argumentative.
Martin: All cases are argumentative, aren't they?
* * * * *
Downs: I only know what people tell me.
* * * * *
Downs: I was told by people who are licensed, practicing attorneys--*one is a judge in the state of Delaware* [emphasis added]--so that's who I'm quoting. This is not my--how would you say--this is not my opinions, this is just what I was told by people who I know for a fact are licensed, practicing attorneys. O.K.? The guy from the magazine was down and he did some research both on you and . . . .
* * * * *
Downs: It's one of these scandal rags, and all they need is the tapes, and the name of a confidential source. You know?
Martin: Well, no one gives any credibility to those things anyhow, so--
Downs: Well, the main thing is that--the main thing that sells is, I mean, you know, . . . .
* * * * *
Downs: I think it's going to work out good for me and Joyce. I'm going over--I have to meet with a guy from the publication [tabloid] Wednesday, and then Thursday, I'm going over to Jersey to see this Deputy Clerk, and then I have to go to see somebody in the AG's Office. [Bar admission proceedings are supposed to be confidential.]
Martin: Yes, they're the ones who are trying to defend those people, . . .
* * * * *
Downs: Jim, Jim, you can quote all these laws all you want. All I'm going to do is, is I'm going to get my pound of flesh. . . . . I have tapes of what people told me, and I have tapes--and this is not being taped, by the way, unless you're taping it, which I don't care one way or another.
* * * * *
Downs: All I can do is stir up a lot of sh--. That's what I'm doing. I'm stirring up a lot of sh--. . . . I'm in a position where it won't hurt me to look like a fool. But you . . . aren't. . . . .

**RELATED CASES AND PROCEEDINGS**

See this Section in Martin v. Sparks, Widener, et. al., No. 92-5068, filed here on 7-1-92, as well as Martin v. Koreman, Civil No. 92C-04-44, DE Super.

**REASONS THIS WRIT SHOULD BE GRANTED**

The trial judge's persistent bias in favor of Widener, a respondent, is evident even to one who does not know the details of the judge's affiliation. He was already removed from a related case against Widener University, as indicated at A(15) in the record below.

The member justices of Delaware's Supreme Court are also affiliated with the institutional respondent, and they, like Judge Poppiti, publically associated with Santoro, Widener's Dean when this case was before the courts below. In a decision dated 9-10-90 in a related case, the DE Supreme Court relied upon the "Rule of Necessity" to avoid granting the Motion to Recuse directed against them in view of their association with the School in a related case. The Rule of Necessity does not even arguably apply to protect Judge Poppiti.

In Aetna Life Insurance Co. v. Lavoie, 475 US 813 (1986), the Court set forth these elements to warrant not merely a recusal, but also a constitutional violation, where the judge at issue served on a state court:

"More than 30 years ago Justice Black, speaking for the Court, . . . acknowledge[d] that what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' Nonetheless, a reasonable formulation of the issue is whether the 'situation is one which would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear, and true." 475 US at 821-822.

DATED: August 3, 1992 Respectfully submitted,

James L. Martin

James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

**PUBLISHER'S NOTE:**

**ORIGINAL PAGINATION IS NOT CONTINUOUS.**

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|---|---|---|
| JAMES L. MARTIN,<br><br>Appellant,<br><br>v.<br><br>CHRISTINE MCDERMOTT and DELAWARE VOLUNTEER LEGAL SERVICES, INC., a.k.a. WIDENER UNIVERSITY SCHOOL OF LAW DELAWARE CIVIL CLINIC,<br><br>Appellees. | § | No. 448, 1991<br><br>Court Below: Superior Court of the State of Delaware in and for New Castle County C.A. No. 91C-04-293-1-CV |

Submitted: May 29, 1992
Decided: June 5, 1992

Before VEASEY, Chief Justice, HORSEY, Justice, ALLEN, Chancellor,* and CHANDLER, Vice-Chancellor,* constituting the qualified and available members of the Court en banc.

O R D E R

This 5th day of June, 1992, upon consideration of appellant's motion for rehearing en banc, it appears to the Court that appellant's motion fails on its face to comply with the requirements of Supreme Court Rule 4(f) in that it is not based on any of the three permissible grounds enumerated therein, and is accordingly wholly without merit.

NOW, THEREFORE, IT IS ORDERED that appellant's motion for rehearing en banc is

DENIED.

BY THE COURT:

Justice

* Sitting pursuant to Supreme Court Rules 2(a) and (b), 4(a) and (d), and Article IV, § 12 of the Delaware Constitution.



IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|---|---|---|
| JAMES L. MARTIN,<br><br>Appellant,<br><br>v.<br><br>CHRISTINE MCDERMOTT and DELAWARE VOLUNTEER LEGAL SERVICES, INC., a.k.a. WIDENER UNIVERSITY SCHOOL OF LAW DELAWARE CIVIL CLINIC,<br><br>Appellees. | § | No. 448, 1991<br><br>Court Below: Superior Court of the State of Delaware in and for New Castle County C.A. No. 91C-04-293-1-CV |

Submitted: March 24, 1992
Decided: May 26, 1992

Before HORSEY, Justice, ALLEN, Chancellor,* and CHANDLER, Vice-Chancellor.*

O R D E R

This 26th day of May, 1992, upon consideration of appellant's opening brief and appellees' motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) On July 3, 1990, appellant James L. Martin filed an action in the Justices of the Peace Court, for debt against Margret Newcomb. On August 9, 1990, the court entered a default judgment against Newcomb in the amount of $215.00 plus costs.

(2) On January 18, 1991, appellant filed a second action in the Justices of the Peace Court, naming as defendants, "Steven Corman, [sic] alleged executor of the estate of Margret Newcomb; and Christine McDermott." On April 4, 1991, the court dismissed

* Sitting pursuant to Supreme Court Rules 2(a) and (b) and Article IV, § 12 of the Delaware Constitution.

the action against defendants Steven Corman [sic] and Christine McDermott. On April 9, 1991, appellant filed a "Notice and Allowance of Appeal" in the Court of the Justices of the Peace. This notice identified as defendants, "Steven Koreman, alleged executor of the estate of Margret Newcomb; and Christine McDermott, Esq.," and made reference to the judgment of April 4, 1991.

(3) On April 29, 1991, appellant filed a complaint in Superior Court, purporting to be an appeal from a judgment of the Justices of the Peace Court. However, defendants were identified in the caption of the complaint as "Christine McDermott and Delaware Volunteer Legal Services, Inc., a.k.a. Widener University School of Law Delaware Civil Clinic." Moreover, the complaint stated that the nature of the action was "for interference with contractual relations and for violating Rule 11..."

(4) On August 16, 1991, defendants filed in Superior Court an amended motion to dismiss. At an office conference on September 17, 1991, Superior Court granted defendants' motion to dismiss on grounds of lack of subject matter jurisdiction. On the same day, appellant moved to recuse and disqualify then Superior Court Judge Vincent J. Poppiti. Appellant's motion for recusal, and his later-filed motion for reargument were denied by orders dated November 8, 1991. On November 27, 1991, appellant filed a notice of appeal in this Court.

(5) Appellant's opening brief asserts that Superior Court erred in finding that it had no jurisdiction. We disagree. The jurisdiction of Superior Court to hear appeals de novo from the



Justices of the Peace Court is conferred by 10 Del. C. § 9570. That statute has been consistently construed as limiting Superior Court's jurisdiction to trial de novo of "that same action as instituted in the Justice Court." Cooper's Home Furnishings, Inc. v. Smith, Del. Super., 250 A.2d 507, 508 (1969); Dzedzej v. Prusinski, Del. Super., 259 A.2d 384 (1969). Either a change of parties or subject matter of the "appeal" from the party litigants and claims stated below is a jurisdictional bar to trial de novo in Superior Court. Id. Appellant's appeal to Superior Court involves different parties and different claims from those involved in the action purportedly appealed from. Accordingly, appellant's claim is without merit.

(6) Appellant's claim of error in the failure of Judge Poppiti to recuse himself, in addition to being frivolous and totally without merit, is therefore moot.

NOW, THEREFORE, IT IS ORDERED that the judgment of Superior Court be, and the same hereby is

AFFIRMED.

BY THE COURT:

Justice

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

| | | |
|---|---|---|
| JAMES L. MARTIN, | ) | |
| *Plaintiff,* | ) | |
| v. | ) | *C.A. NO. 91C-04-293* |
| CHRISTINE McDERMOTT, et al. | ) | |
| *Defendants.* | ) | |

# ORDER

THIS 7th DAY OF NOVEMBER, 1991:

Upon consideration of the pleadings filed and for the same reasons as stated in Martin v. Widener University School of Law, et al., on the record regarding Plaintiff's Motion to Recuse and to Disqualify Honorable Vincent J. Poppiti on July 9, 1991, Plaintiff's Motion to Recuse and to Disqualify Honorable Vincent J. Poppiti is HEREBY DENIED.

*IT IS SO ORDERED.*

VINCENT J. POPPITI, Judge

VJP/tap
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E 4-29-91
1st CAPP

Signed Copy

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

| | | |
|---|---|---|
| JAMES L. MARTIN, | ) | |
| Plaintiff Below, Appellant | ) | |
| v. | ) | C.A. No. 91C-04-293-1-CV |
| CHRISTINE McDERMOTT and DELAWARE VOLUNTEER LEGAL SERVICES, INC., a/k/a WIDENER UNIVERSITY SCHOOL OF LAW DELAWARE CIVIL CLINIC, | ) | |
| Defendant Below, Appellees. | ) | |

**NOTICE OF MOTION**

TO: James L. Martin
912 McCabe Avenue
Wilmington, DE 19802

PLEASE TAKE NOTICE that the undersigned attorney will present the attached motion to dismiss for consideration of the Court on Tuesday, September 17, 1991 at 3:15 p.m.

SAWYER & AKIN, P.A.

For reasons stated on the record the application is denied.
1/7/91 So Ordered.

Christopher J. Curtin, Esquire
Manufacturers Hanover Plaza
P.O. Box 25047
Wilmington, DE 19899
(302) 655-5552
Attorneys for Christine McDermott, Delaware Volunteer Legal Services, Inc., a/k/a Widener University School of Law Delaware Civil Clinic

DATED: August 16, 1991

cc: Civil Office Judge

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

| | | |
|---|---|---|
| **JAMES L. MARTIN,** | ) | |
| *Plaintiff,* | ) | |
| v. | ) | *C.A. NO. 91C-04-293* |
| **CHRISTINE McDERMOTT, et al.** | ) | |
| *Defendants.* | ) | |

# ORDER

THIS 4th DAY OF NOVEMBER, 1991:

1. The matter is presently before the Court on the Plaintiff's Motion for Reargument of Defendants' Motion to Dismiss.

2. Upon consideration of the pleadings filed, I am satisfied that the Plaintiff's application contains nothing which convinces me that my decision and order is in error.

3. Having stated the above, the application to reargue is **HEREBY DENIED.**

*IT IS SO ORDERED.*

VINCENT J. POPPITI, Judge

VJP/tap
civil\martin.ord



**SUPREME COURT OF THE UNITED STATES**

James L. Martin, petitioner : No. _____

:

v. :

Christine McDermott and Delaware Volunteer Legal Services, Inc., a.k.a Widener University School of Law Delaware Civil Clinic, respondents

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the **Petition for a Writ of Certiorari to the Supreme Court of Delaware**, upon opposing counsel of record for respondents at the following address:

Christopher J. Curtin, Esq.; SAWYER & AKIN.; Manufacturers Hanover Plaza; 1201 N. Market St.; Suite 1600; P. O. Box 25047; Wilmington, DE 19899;

by first-class, postage-prepaid mail this 3rd day of August 1992.

By: James L. Martin
James L. Martin, 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|---|---|---|
| JAMES L. MARTIN, | § | |
| | § | |
| Appellant, | § | |
| | § | No. 448, 1991 |
| v. | § | |
| | § | Court Below: Superior Court |
| CHRISTINE MCDERMOTT AND | § | of the State of Delaware |
| DELAWARE VOLUNTEER LEGAL | § | in and for New Castle County |
| SERVICES, INC. A/K/A WIDENER | § | C. A. No. 91C-04-293-1-CV |
| UNIVERSITY SCHOOL OF LAW | § | |
| DELAWARE CIVIL CLINIC, | § | |
| | § | |
| Appellees. | § | |

O R D E R

This 27th day of February, 1992,

A quorum of the Supreme Court not being available to sit as a three-justice panel in the above-captioned matter,

NOW, THEREFORE, IT IS ORDERED that Chancellor William T. Allen and Vice Chancellor William B. Chandler III of the Court of Chancery of the State of Delaware are hereby designated, pursuant to Supreme Court Rule 2(a) and Article IV, § 12 of the Delaware Constitution, to sit in the Supreme Court temporarily to fill up the number of that Court in order to consider and rule upon the issues raised in the case.

BY THE COURT:

Justice



Form 1

IN THE SUPREME COURT OF THE STATE OF DELAWARE

Martin vs McDermott } No. 448, 1991

**The following docket entry has been made in the above cause.**

Jan. 22 Memo dated 1/21/92 from Justice Moore to Clerk, noting his disqualification in the above case. Parties notified.

Jan. 22 Memo dated 1/22/92 from Justice Walsh to Clerk, noting his disqualification in the above case. Parties notified.

cc: James L. Martin
Christopher J. Curtin, Esquire

Date: January 22, 1992



Clerk

IN THE SUPREME COURT OF THE STATE OF DELAWARE

Martin vs Christine McDermott and Delaware Volunteer Legal Services, Inc. a/k/a Widener University School of Law Delaware Civil Clinic No. 448, 1991

The following docket entry has been made in the above cause.

10. Jan. 22. Memo dated 1/22/92 from Justice Holland to Clerk, noting his disqualification in the matter. Parties notified.

cc: Mr. James L. Martin
Christopher J. Curtin, Esquire

Date: January 23, 1992

Senior Court Clerk



SUPREME COURT OF THE UNITED STATES

James L. Martin, petitioner : No. _____

v. :

Christine McDermott and Delaware Volunteer Legal Services, Inc., a.k.a Widener University School of Law Delaware Civil Clinic, respondents

**Petitioner's Motion for Leave to Proceed *in forma pauperis***

I, James L. Martin, move for leave to proceed in this matter *in forma pauperis*, without prepayment of costs and fees. All fees and costs incident to this matter in the courts below have been prepaid. My Verified Statement in support of this Motion is attached as Ex-1a, and the issue presented is incorporated herein from the Petition for a Writ of Certiorari to the Supreme Court of Delaware, which accompanies this Motion.

DATED: August 3, 1992 BY: James L. Martin

James L. Martin; 912 McCabe Ave.; Wilm., DE 19802 (302) 652-3957